Supreme Court, U.S.
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No. ____

In The Supreme Court of the United States

October Term, 1994

Sheet Metal Workers International Association, Local 9,
Cross-Petitioner,

v.

Curtis Guidry,
Cross-Respondent.

Cross-Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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CROSS-PETITION FOR A WRIT OF CERTIORARI

Joseph M. Goldhammer *
Brauer, Buescher, Valentine, Goldhammer & Kelman, P.C.
1563 Gaylord Street
Denver, CO 80206
(303) 333-7751

* Counsel of Record

Wilson - Epes Printing Co., Inc. - 789-0096 - Washington, D.C. 20001

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QUESTION PRESENTED FOR REVIEW

I. Does the Tenth Circuit's holding that a Colorado statute which exempts from garnishment 75% of paid pension benefits is not preempted under ERISA conflict with this Court's decisions?

LIST OF THE PARTIES

The parties to this case are Petitioner Curtis Guidry and Respondents Sheet Metal Workers' National Pension Fund; Sheet Metal Workers' International Association, Local 9; Sheet Metal Workers' Local No. 9 Pension Fund; Edward J. Carlough, Robert T. Stringer, C.T. Roff and Cavet Snyder, Trustees; Sheet Metal Workers' Local Unions and Councils Pension Plan and Edward J. Carlough, Cecil D. Clay, George J. Cuddihy, Urie E. Williams, Jr. and Richard J. Scott, Trustees.

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OPINIONS BELOW

The majority decision of the Tenth Circuit three-member panel of November 4, 1993, is reported at 10 F.3d 700 (10th Cir. 1993). A Petition for Rehearing En Banc was granted, and the decision of the Tenth

Circuit en banc, dated November 1, 1984, is published at 39 F.3d 1078 (10th Cir. 1994). The January 8, 1992 unpublished opinion of the District Court is produced along with the two opinions of the Tenth Circuit in the Appendix (A-66-A-71) to Petitioner's Petition for Writ of Certiorari.

JURISDICTION

The en banc decision of the Tenth Circuit was filed November 1, 1994. This Court's jurisdiction to review the Tenth Circuit's opinion and judgment arises under 28 U.S.C. § 1254(1). The Cross Petition is filed pursuant to Supreme Court Rule 12.3. Cross Petitioner received the Petition for Writ of Certiorari on January 30, 1995.

PERTINENT STATUTES

The Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, provides in Section 514(a), 29 U.S.C. § 1144(a), as follows:

> . . . the provisions of this Title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in Section 4(a). . . .

Colorado Revised Statutes § 13-54-104 (1987 replacement volume) provides as follows:

> 13-54-104. Restrictions on garnishment and levy under execution or attachment.
>
> (1) As used in this section, unless the context otherwise requires:
>
> (b) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, avails of any pension or retirement benefits, or deferred compensation plan, avails of health, accident, or disability insurance, or otherwise. . .

> (2)(a) . . . the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment or levy under execution or attachment may not exceed twenty-five percent of his disposable earnings for that week. . . .

STATEMENT OF THE CASE

In 1982, Curtis Guidry, chief executive officer of Sheet Metal Workers International Association Local 9 ("the Union") pled guilty to embezzling more than $377,000.00 from the Union in violation of the Labor Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. § 501(c). He then sued two of the respondent pension plans under the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 et seq. claiming they had wrongfully refused to pay him pension benefits. The Union intervened, joined the third pension plan and asserted six claims against Guidry, one under the LMRDA, *supra,* and five under state law theories claiming Guidry's liability for the embezzlements. Guidry and the Union then stipulated to entry of a $275,000.00 judgment against Guidry. The District Court found the pension funds liable to Guidry for his pensions, but subjected those benefits to a constructive trust in favor of the Union until the Union's judgment and interest thereon were satisfied. The United States Court of Appeals for the Tenth Circuit affirmed District Court, and this Court granted certiorari to review the Tenth Circuit's original decision.

On January 17, 1990, this Court held that the constructive trust violated ERISA's anti-alienation provision (ERISA § 206(d), 29 U.S.C. § 1056(d)(1)). The Court reversed the judgment of the Court of Appeals and remanded the case for further proceedings consistent with its opinion. *Guidry v. Sheet Metal Workers National Pension Fund et al.,* 493 U.S. 365 (1990), hereinafter, *Guidry I.* Thereafter, the District Court ordered the pension plans to deliver Guidry's pension benefits to him.

The Union sought to obtain Guidry's pension benefits through legal process immediately after their delivery. Eventually, the parties stipulated that all past and ongoing pension benefits would be deposited into a bank account in Denver, Colorado subject to a writ of garnishment issued May 1, 1991, pending the District Court's final disposition of Guidry's claims for exemption from the garnishments. Appendix A-76-A-81. *Inter alia,* Guidry claimed a 75% exemption under Colorado Revised Statutes § 13-54-104(2)(a).

The District Court held that all of the funds deposited in Guidry's Denver account were exempt under ERISA's anti-alienation provision. Appendix A-69. In view of this finding, the District Court held Guidry's claims for exemption under Colorado law inapplicable. Appendix A-69-A-70.

A three judge panel of the Tenth Circuit Court of Appeals, with one judge dissenting, reversed the District Court's ruling that the anti-alienation provision exempted Guidry's received benefits. Appendix A-15-A-27. The Court held Guidry's claim under the Colorado statute preempted by ERISA § 514(a). Appendix A-32-A-33.

The Tenth Circuit Court of Appeals en banc affirmed the holding of the panel on the ERISA anti-alienation issue. Appendix A-46. However, the Court rejected the ERISA pre-emption argument, applied the Colorado exemption statute, and held that 75% of the deposited funds were exempt. Appendix A-50-A-60. The Court held that the ERISA preemption provision, ERISA § 514(a), does not supersede the Colorado statute because it does not "relate to" an ERISA benefit plan. According to the 10th Circuit, the Colorado statute has no connection with the plans because it has no impact upon them and it does not refer to the plans, only to benefits. Appendix A-54-A-57.

REASONS FOR GRANTING THE CROSS PETITION FOR CERTIORARI

I. THIS COURT SHOULD REVIEW THE TENTH CIRCUIT'S HOLDING THAT THE COLORADO STATUTE WHICH PARTIALLY EXEMPTS THE "AVAILS OF ANY PENSION OR RETIREMENT BENEFITS" IS NOT PREEMPTED UNDER ERISA.

The Tenth Circuit's holding that the Colorado Wage Exemption Statute does not relate to benefit plans conflicts with two recent decisions of this Court, *District of Columbia v. Greater Washington Board of Trade,* —— U.S. —— (1992), 113 S. Ct. 580, 121 L.Ed.2d 513, and *Ingersoll Rand v. McClendon,* 498 U.S. 133 (1990). ERISA § 514(a), 29 U.S.C. § 1144(a), provides that ERISA "shall supersede any and all state laws insofar as they may now or hereafter relate to any employee benefit plan. . . ." This Court has repeatedly held that a law "relate[s] to" an employee benefit plan if it has a connection with or makes reference to such a plan. *Ingersoll Rand supra* 498 U.S. at 139. The Tenth Circuit here held that the Colorado statute did not refer to an employee benefit plan because it refers to pension benefits, not plans, and because it is a law of general application to wages. According to the Tenth Circuit, the Colorado statute had no connection with the ERISA plans, because it had no direct or indirect impact on those plans.

In so holding, the Tenth Circuit ignored the parallels between this case and *Ingersoll-Rand, supra.* In that case, this Court held preempted a Texas common law cause of action for termination of an employee to avoid contributing to or paying benefits under a pension plan. The plaintiff in that case argued that his Texas cause of action was not preempted because it did not relate to a plan, since only the *employer's* improper motive to avoid pension obligations was at issue. Similarly, here, the Tenth

Circuit held that the exemption statute was entirely divorced from the plan because it only concerned benefits after payment by the plans.

However, this Court held in *Ingersoll-Rand* that the Texas cause of action related to the benefit plan because it was "premised on" the existence of an ERISA covered plan. *Ingersoll-Rand, supra,* 498 U.S. at 140. As the Court stated:

> The Texas cause of action makes specific reference to, and indeed is premised on, the existence of a pension plan. . . . [I]n order to prevail, a plaintiff must plead, and the Court must find that an ERISA plan exists and the employer had a pension defeating motive in terminating the employment. Because the court's inquiry must be directed to the plan, this judicially created cause of action "relate[s] to" an ERISA plan. . . . [U]nder the Texas Court's analysis there simply is *no* cause of action if there is no plan.

Ingersoll-Rand, supra, 498 U.S. at 140.*

Likewise, in the present case, Guidry's claim for exemption, while based upon language in the Colorado statute alluding to "benefits," makes specific reference to and is premised on the existence of pension plans. Like the plaintiff under the Texas cause of action in *Ingersoll-Rand,* Guidry must plead, and the Court must find, that an ERISA plan exists for him to prevail on his claim for exemption. Furthermore, according to the Tenth Circuit, Guidry must prove that the amounts in his bank account derive *exclusively* from the plans because the exemption applies only to the "uncommingled pension benefits held by him in his bank account." Appendix A-60. Like the plaintiff in *Ingersoll-Rand,* Guidry has no claim if there is no plan.

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* In *Greater Washington Board of Trade, supra,* 121 L.Ed. at 521 this Court described *Ingersoll-Rand* as holding the Texas "claim preempted because it was 'premised on' the existence of an ERISA covered pension plan."

The Court's determination on this issue should not turn upon the phrasing of the Colorado statute alluding to benefits and not plans. Had the Colorado legislature chosen the term "avails of pension or retirement plans" instead of "benefits" the same result should obtain. The point is that the existence of the pension plan is a critical factor in establishing Guidry's claim for exemption.

The Tenth Circuit's holding that the Colorado statute is of general applicability is inconsistent with this Court's decision in *District of Columbia v. Greater Washington Board of Trade, supra.* The Colorado statute specifically refers to "the avails of any pension or retirement benefits." Admittedly, such benefits may derive from either an ERISA-covered plan or an uncovered plan. However, as this Court stated in *Greater Washington Board of Trade, supra*:

> The exemptions from ERISA coverage set out in § 4(b), 29 U.S.C. § 1003(b), do not limit the pre-emptive sweep of § 514 once it is determined that the law in question relates to a covered plan.

Greater Washington Board of Trade, supra 121 L.Ed at 521. Since the Colorado exemption statute covers pension or retirement benefits derived from ERISA plans as well as non-ERISA plans, it relates to ERISA plans and is preempted.

The Tenth Circuit's holding that the reach of ERISA's pre-emption should only extend as far as the anti-alienation provision itself (§ 206(d)(1)) is also incorrect. ERISA § 514(a) mandates the pre-emption of all state laws that relate to benefit plans, regardless whether they are within ERISA's substantive coverage. At this Court stated regarding the meaning of the words "relate to" in § 514(a):

> Congress used those words in their broad sense, rejecting more limited pre-emption language, 'applicable only to state laws relating to the specific subjects covered by ERISA.'

Ingersoll-Rand, supra, 498 U.S. at 138 quoting *Shaw v. Delta Airlines,* 463 U.S. 85, 98 (1983). Thus, the scope of ERISA's preemption is exceedingly expansive and encompasses laws which "relate to" benefit plans whether or not specifically addressed in ERISA.

CONCLUSION

Similar to the situation in the *Ingersoll-Rand* case, the existence of a pension plan is a critical factor in establishing Guidry's right to exemption under the Colorado statute. To sustain his claimed 75% exemption, Guidry must not only prove that the funds are derived from an ERISA pension plan but that they were not commingled with any other funds from any other sources. Therefore, Guidry's claim for exemption relates not only to pension benefits but to the essence of the pension plan itself, and is preempted under ERISA § 514(a). The Tenth Circuit's contrary holding directly conflicts with the recent decisions of this Court.

DATED this 1st day of March, 1995.

Respectfully submitted,

JOSEPH M. GOLDHAMMER *
BRAUER, BUESCHER, VALENTINE,
GOLDHAMMER & KELMAN, P.C.
1563 Gaylord Street
Denver, CO 80206
(303) 333-7751

* Counsel of Record